

damages, because the mistake, if there was any, was at once communicated to the plaintiff while the seed was on the ocean in transit, and the plaintiff did not put defendants at arms length and insist upon a delivery at London, but said it was all the same to him if the consignee, the man to whom he had sold it, would take delivery at Liverpool: that he was his own consignee, had not made any sale, and had full power and authority over the seed, except so far as affected by the hypothecation to the bank.

The learned Judge decided to hear the defence, and the effect of the evidence on both sides was as given above. Neither party asked Barr or otherwise than as it might be inferred from his position and the correspondence of Mellhanny and Barton, the agent at Black Rock, what his actual authority was.

After consideration the learned Judge gave the following judgment:

There are three questions in the case:—First. Was there a contract? Second. Was it broken? Third. What damage has the plaintiff sustained by the breach?

As to the first, I think there is evidence on which I ought to find that Barr, the defendants' agent, in Toronto, had authority to issue the substituted bill of lading, by which the destination of the goods was to be changed from Liverpool to London. The defendants are a corporation who carry on business here through agents at different points. The extent of the power of these agents has not been shewn; but Barr did agree with the plaintiff to change the destination of goods which had been shipped through another agent of the defendants, and received back the bills of lading which had been given by that agent. He advised the company's agent at Black Rock, near Buffalo, the point where the goods were to be bonded to New York, and that agent believed he had complied with his instructions, and had done all that was necessary to effect the change. There is no doubt that Barr believed that he had authority to do as he did, and that he believed and led the plaintiff to believe that the change of destination could be effectually accomplished. This was also the belief of the agent at Black Rock, who by some error or oversight—for which the plaintiff is not responsible—neglected fully to carry out his instructions, though he was under the impression that he had done so. It is not proved as a fact, if that would make any difference, that the goods had passed Black Rock on their way to New York, before the agent there, Barton, had received his instructions. Thereafter there was a good deal of correspondence between Barr and Barton, and between the former and the general agent of the defendants at New York. There is